

## **REMARKS**

### **Status of the Claims**

Applicants hereby withdraw claims 34-48, 54, and 61-69, amend claims 49-53, 55-60, and 70. New claims 71-106 are hereby introduced. Support for new claims 71-106 may be found, at least, in the claims as originally-filed and throughout the specification. Applicants respectfully submit that no new matter is added.

### **Status of Previous Office Action**

It is Applicants' understanding that the Office Action mailed from the U.S. Patent Office on January 9, 2004 withdraws the previous Office Action dated September 30, 2003. Applicants believe that any period for reply to the Office Action dated September 30, 2003 has been withdrawn by the Examiner's Office Action dated January 9, 2004 and the new statutory period for Applicants' reply is reset to expire on July 9, 2004.

Applicants believe that the response filed herewith in the instant application is timely and requires no extension of time. Should Applicants understanding be incorrect, Applicants respectfully request that the Examiner telephone the undersigned representative to discuss the status of this application at the number provided below.

### **Restriction Requirement**

The Office Action requires restriction under 35 U.S.C. §121 to one of the following inventions.

*Invention I:* Claims 34-48, 54, 57-60, 69, and 70.

*Invention II:* Claims 49-53, 55-60, and 70.

*Invention III:* Claims 61-68.

Applicants hereby provisionally elect Invention II, claims 49-53, 55-60, and 70, with traverse. Applicants do not waive or abandon any rights in the non-elected inventions.

Applicants request rejoinder of claims 45-48 of Invention I with the claims of Invention II. MPEP §803 specifies two requirements for restriction. First, the inventions of the groups alleged to be separately patentable must be independent and distinct. Second, there must be a serious burden on the Examiner to justify restriction. Applicants submit

that no more work is required on the part of the Examiner to search the art for an Invention I device (claims 45-48) requiring a matrix including at least one non-mineralized tissue that allows the attachment of infiltrating cells, than is required to search the art for the device of claim 49 of elected Invention II requiring a matrix including articular cartilage that allows the attachment of infiltrating cells. Applicants urge that the examination of claims 45-48 in Invention I with claims 49-53 and 55-60 of Invention II would not create an undue search burden on the Examiner.


### CONCLUSION

After entry of the amendment and election of Invention II, claims 49-53, 55-60, and 70, and new claims 71-106 are presented for examination. Applicants respectfully request rejoinder of claims 45-48 with claims 49-53, and 55-60, and 70 of Invention II. Should the Examiner have any questions, the Examiner is invited to telephone Applicants' undersigned representative at the number below.

Respectfully submitted,

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